IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1460 OF 2003
IN
EXECUTION APPLICATION NO.388 OF 2003
IN
SUIT NO.3550 OF 1990

Dr.Shrikant B. Hegde ....Plaintiff

V/s.

Rangnath Anant Haridas ....Defendant

Mr.S.B. Prabhavalkar for the Plaintiff.
Mr.C. D'Souza for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH AUGUST, 2004.

P.C. :

1. The Chamber Summons is taken out for the following order :-

> "(a) that pending the above Execution Application, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay with all powers under Rule XL rule 1 of C.P.C. 1908 with further directions to the Court Receiver, High Court, Bombay, to take possession of Flat No.B-4, 2nd floor, Golden Height, situated at Anant Patil Marg, Dadar Mumbai 400028, with further directions to the Court Receiver to appoint

Architect and contractor from panel of this Hon'ble Court to get the said incomplete work completed as mentioned in the report dated 29th November, 1999 filed by M/s.Nadkarni & Co. in Notice of Motion No.2660 of 1999 and to obtain part Occupation Certificate from the Municipal Corporation of Greater Mumbai, in respect of the said flat with further directions to hand over quiet, vacant and peaceful possession of the said flat to the Plaintiff as per consent decree dated 1st November 1991."

2. The consent terms contained the following clauses :-

"2. The parties confirm that the agreement dated 16.9.1985 between them is valid and subsisting and the same is binding on the parties.

3. The Defendant hereby confirms having received Rs.2,35,000/- from the Plaintiff as per the agreement dated 16.9.1985.

5. The Defendant states that as per the said proposed plan there are no flats admeasuring about 750 sq.ft. in both the Wings of the proposed buildings. But there are flats admeasuring about 925 sq.ft. (super built up area) in the said building and the Plaintiff has agreed to purchase a flat admeasuring 925 sq.ft. on further payment of Rs.6,00,000/- which the Plaintiff has agreed to purchase the flat on 2nd floor in Wing B Western Side on the following terms.

6. The Defendant to sell and to

entrust to the Plaintiff flat No.B-4 on the 2nd floor of B-Wing (super built up area) of the building on Plaintiff's paying the sum of Rs.6,00,000/- in addition to Rs.2,35,000/- already paid by him to the Plaintiff in the following manner :

Rs.3,00,000/- prior to the execution of these terms by Pay Order No.466770 dated 31.10.1991 at the time of Defendant handing over quiet, vacant and peaceful possession of Flat No.B-4, 2nd floor, B-Wing at Anant Patil Marg, Shivaji Park, Dadar (West), Bombay-400028.

7. The Defendant agrees and undertakes to provide the aforementioned flat with all modern facilities to the Plaintiff, after the said building is ready for occupation. The Defendant agrees and undertakes to execute separate agreement to sell in respect of the aforementioned flat admeasuring 925 sq.ft. (super built up area) in favour of the Plaintiff as required by Maharashtra Ownership Flat Act, 1964 within eight weeks from the execution of these terms and the Plaintiff agrees and undertakes to pay stamp duty and registration charges as applicable on the agreement registered before the Sub-Registrar of Assurances at the earliest as required by the said Act.

11. The Defendant hereby agrees and undertakes to hand over quiet, vacant and peaceful possession of Flat No.B-4, 2nd floor, B-Wing at Anant Patil Marg to the Plaintiff on his paying the entire consideration mentioned hereinabove and after completing the construction of the entire building wherein the said

> flat is situated and the said flat is ready for occupation.
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> 13. The Minutes of Order dated 16th day of September, 1991 passed by Their Lordships Chief Justice P.D. Desai and Mr.Justice Tipnis in Appeal No.622 of 1991 shall remain in force until the Defendant hands over possession of the said flat to the Plaintiff on Plaintiff's paying the entire consideration mentioned hereinabove.

3. Clause 2 of the minutes of the order dated 16th September, 1991 referred to in Clause 13 above reads as under :-

> "The Respondent/ori.defendant states that there is no flat admeasuring 750 sq.ft. in the proposed building. However, there is a flat of 925 sq.ft. on second floor (Right side) which at present is not agreed to be sold to anyone. The Respondent states that without prejudice to his rights and contentions the Respondent shall not enter into any agreement for sale in respect of said flat unless he has given seven days clear notice to the Appellant's Advocate, during which period the Appellant shall be at liberty to adopt appropriate proceedings before trial court for appropriate reliefs. The Respondents shall also be at liberty to urge all contentions as are permissible to him in law."

4. By an order dated 10th August, 1999, S.S.

Nijjar, J. held that the Defendants had failed and neglected to comply with the above order. His Lordship observed that the Defendants had committed contempt of court. In the circumstances, the learned Judge in order to protect the interest of the Plaintiff granted ad-interim relief in terms of prayer (a) of the Notice of Motion No.2660 of 1999. However, that Notice of Motion was withdrawn with liberty to adopt appropriate proceedings. A further Notice of Motion No.1701 of 2002 for similar reliefs was also withdraw, as reflected from the order dated 30th July, 2001. The explanation that the aforesaid Notices of Motion were withdrawn for the purpose of adopting appropriate proceedings, is accepted.

5. The present Chamber Summons is taken out in execution proceedings, which is a proper remedy.

6. There is no answer on the merits of the case whatsoever. The only answer sought to be given is that there was an alleged oral understanding prior to the execution of the consent terms dated 1st November, 1991. The same is unsustainable, in view of the fact that the consent terms are still valid and binding.

7. The Defendant has not complied with any of

his obligations including the obligation under clause 7 of the consent terms. There is an open defiance of the order.

8. The learned counsel appearing on behalf of the Defendant further stated that there is an order of attachment in respect of Flat No.B-3 passed by the Debt Recovery Tribunal in respect of the dues of SICOM. Admittedly an M.O.U. dated 9th July, 1996 was entered into between the Defendant and Dinesh Anant Rane for flat No.B-3. That flat however, is not the subject matter of this suit. The learned counsel for the Defendant further stated that there is no wall between flat No.B-4 i.e. the suit flat and flat No.B-3. He further states that the possession of flat No.B-4 was never handed over to the said Rane and that Rane does not have any right in respect thereof. The warrant of attachment therefore on his own showing does not apply to the suit flat. In fact had the Defendant sought to create any right in respect of flat No.B-4 i.e. the suit flat in favour of Rane or anyone else, it would have been contempt of the aforesaid orders of this Court. In the circumstances, there can be no objection to the grant of reliefs in the present Chamber Summons.

9. The Chamber Summons is made absolute in terms of prayer (a). The Court Receiver shall erect a wall at the appropriate place between flat Nos.B-3 and B-4. The Defendant shall pay the costs of this Chamber Summons fixed at Rs.5000/- within two weeks from today. The Defendant shall also pay the cost of construction of the wall to the Court Receiver within four weeks of a demand for the same by the Court Receiver.

10. The operation of this order is stayed for a period of four weeks from today to enable the Defendant to carry the matter higher.

11. The Chamber Summons is accordingly disposed of.

. Parties to act on an ordinary copy of this order duly authenticated by the Chamber Registrar/ Court Stenographer of this Court.